

REMARKS

The Office Action addresses claims 1-13, of which claim 1 stands rejected under 35 U.S.C. § 102(b) and claims 1-4 and 6-10 stand rejected under 35 U.S.C. § 103. Claims 5 and 11 were previously cancelled. Claims 12 and 13 have been found to define allowable subject matter, but they stand objected to as being dependent upon a rejected base claim. Reconsideration is respectfully requested in view of the following remarks.

Rejections Pursuant to 35 U.S.C. § 102(b)

The Examiner rejects claim 1 pursuant to 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2003/0233145 of Landry et al. ("Landry"). Applicants respectfully disagree.

Claim 1 is directed to a method for implanting an artificial disc in an intervertebral space in which a portion of a midline marker embeds in *the face of a vertebral body*. Landry describes no such technique. In the Examiner's most recent rejection, he argues that the disclosure of Landry constitutes a midline marker being embedded in the vertebral body. The Examiner references Figures 40-44 and paragraph [184], which includes the language "spreader 400 may be positioned between the insertion guides. A mallet or other impact instrument may strike upper surface 470 of end cap 468 to drive spreader 400 *into the disc space or between the bone segments.*" (Emphasis added.) While Landry may teach that the insertion guides (1004, 1006) and the spreader (400) are inserted into the disc space *between* the vertebral bodies, nothing disclosed in Landry *embeds in a face of a vertebral body* as claimed by Applicants. Landry simply discloses that its device extends into a *disc space*; it does not embed in the face of a vertebral body. A *disc space* is the space between adjacent vertebral bodies that typically contains a disc. A spreader of the type disclosed by Landry positioned in the disc space between adjacent vertebral bodies does not embed in the face of any vertebral bodies – it simply is placed between the adjacent vertebral bodies.

For these reasons, Applicants submit that Landry is entirely different than what is claimed. Claim 1 thus distinguishes over Landry and represents allowable subject matter.

Rejections Pursuant to 35 U.S.C. § 103(a)

Robie, in view of Landry

The Examiner rejects claims 1, 2, and 6-10 pursuant to 35 U.S.C. § 103(a) as being obvious over U.S. Patent Application Publication No. 2002/0161366 to Robie et al. (“Robie”) in view of Landry. Claim 1 is directed to a method for implanting an artificial disc in an intervertebral space in which a portion of a midline marker embeds in the face of a vertebral body. As the Examiner highlights in his most recent Office Action, Robie fails to disclose the use of a midline marker as a guide, and thus the Examiner relies on Landry to teach a midline marker embedded in a face of a vertebral body for use as a guide. As discussed above, the teachings in Landry fail to remedy this deficiency because Landry simply fails to disclose, teach, or even suggest anything that is embedded in the face of a vertebral body. Accordingly, claim 1, as well as claims 2 and 6-10 which depend therefrom, are allowable over Robie in view of Landry.

Robie, in view of Landry, in further view of Michelson

The Examiner also rejects dependent claims 3 and 4 pursuant to 35 U.S.C. § 103(a) as being obvious over Robie in view of Landry in further view of the U.S. Patent Application Publication No. 2002/0058944 to Michelson (“Michelson”). As noted above, claim 1 is allowable over Robie in view of Landry. Michelson, which the Examiner relies on to teach radiographical markers, also does not disclose a method that includes fixing a position of a midline marker such that a portion of the midline marker embeds in a face of a vertebral body. Thus Michelson likewise fails to remedy the deficiencies of Robie and Landry. Accordingly, claims 3 and 4 are also allowable over Robie in view of Landry in further view of Michelson.

Conclusion

Claims 1-4, 6-10, and 12-13 distinguish over the references cited by the Examiner and are in a condition for allowance. Applicants respectfully request that the Examiner reconsider the claim rejections and objections and allow claims 1-4, 6-10, and 12-13. If the Examiner believes that an interview would facilitate the resolution of any outstanding issues, he is kindly requested to contact the undersigned.

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Respectfully submitted,

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